

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

JAVAR MALLOY,

Plaintiff,

v.

1:18-CV-1460 (BKS/DJS)

JACOB SOPCHAK, et al.,

Defendants.

Appearances:

Javar Malloy
Albany County Correctional Facility
840 Albany Shaker Road
Albany, NY 12211
Plaintiff, pro se

Hon. Brenda K. Sannes, United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff Javar Malloy commenced this action asserting claims under 42 U.S.C. §§ 1983, 1985 and 1986; 42 U.S.C. § 2000d and 3789d; and New York state law arising out of his arrest by Albany Police Department Officers and subsequent prosecution. (Dkt. No. 1). Plaintiff sought leave to proceed in forma pauperis. (Dkt. No. 2). This matter was assigned to United States Magistrate Judge Daniel J. Stewart who reviewed the complaint under 28 U.S.C. §§ 1915(e) and 1915A and, on January 28, 2019, issued a Report-Recommendation and Order, granting Plaintiff leave to proceed in forma pauperis and recommending that certain of Plaintiff's claims be dismissed. (Dkt. No. 4). Specifically, Magistrate Judge Stewart recommended that the following claims be dismissed with prejudice: 1) the Fifth Cause of Action; 2) claims under 42 U.S.C. § 2000d; and 3) claims against Defendants Albany County District Attorney's Office and Albany

Police Department. Magistrate Judge Stewart recommended that Plaintiff's First Cause of Action and his claim under 34 U.S.C. § 10228 be dismissed without prejudice with leave to amend, and that Plaintiff's remaining claims be permitted to proceed. (*Id.*, at 12–13). Magistrate Judge Stewart advised Plaintiff that under 28 U.S.C. § 636(b)(1), he had fourteen days within which to file written objections to the report, and that the failure to object to the report within fourteen days would preclude appellate review. (Dkt. No. 4, at 13). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is

ORDERED that the Report-Recommendation (Dkt. No. 4) is **ADOPTED** in its entirety; and it is further

ORDERED that the following claims in the Complaint (Dkt. No. 1) are **DISMISSED with prejudice**:

(1) The Fifth Cause of Action;

(2) Claims under 42 U.S.C. § 2000d;

(3) Claims against Defendants Albany County District Attorney's Office and Albany Police Department; and it is further

ORDERED that the Plaintiff's First Cause of Action and his claim under 42 U.S.C. § 10228 are **DISMISSED without prejudice with leave to amend**; and it is further

ORDERED that Plaintiff's remaining claims are permitted to proceed; and it is further

ORDERED that Plaintiff is granted leave to file an Amended Complaint **within thirty (30) days** of the date of this Order. Any Amended Complaint must be a complete pleading which will replace the current Complaint in total; and it is further

ORDERED that if Plaintiff files an Amended Complaint within thirty (30) days of the date of this Order, the Amended Complaint shall be referred to Magistrate Judge Stewart for review; and it is further

ORDERED that the Clerk serve a copy of this Order upon plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Brenda K. Sannes", is written over a horizontal line.

Brenda K. Sannes
U.S. District Judge

Dated: March 4, 2019
Syracuse, New York